Office-Supreme Court, U.S.
FILED
JAN 2 0 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 834.

THE STATE OF NEW JERSEY and the PRINCIPAL KEEPER OF THE STATE PRISON AT TRENTON, NEW JERSEY,

Petitioners,

vs.

UNITED STATES OF AMERICA ex rel. ANTHONY RUSSO and UNITED STATES OF AMERICA ex rel. FRANK BISIGNANO,

Respondents.

BRIEF OF THE DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, COMMONWEALTH OF PENNSYLVANIA, AS AMICUS CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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The District Attorney of Philadelphia County, Commonwealth of Pennsylvania, as amicus curiae, respectfully joins in the prayer of the State of New Jersey that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled cases on May 20, 1965 (Rehearing Denied October 13, 1965), reported in 351 F. 2d 429 (3 Cir. 1965).

THE INTEREST OF THE AMICUS CURIAE.

The Commonwealth of Pennsylvania has a vital interest in the ultimate disposition of the questions raised in the instant petition for writ of certiorari. This was recognized by the court below when it entered an order allowing the District Attorney of Philadelphia County and various District Attorney Associations, state and national, to file briefs in support of their respective contentions.[1] A joint brief for the District Attorney of Philadelphia County and for the District Attorney Associations was presented to, and considered by, the court below. The extent and nature of the interest of the District Attorney of Philadelphia County will be set forth in our argument. This brief is filed, without prior consent, pursuant to Rule 42 (4).

ARGUMENT.

Since the reasons for granting the writ in this case, as set forth in the Petition of the State of New Jersey, are most persuasive, and represent as well the position of the Commonwealth of Pennsylvania, there is no need here to reiterate the arguments advanced in support of the petition. The Commonwealth of Pennsylvania, however, has an additional reason to advance in urging that certiorari be granted.

When the decision in *Escobedo v. Illinois,* 378 U. S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964), was announced, the Supreme Court of Pennsylvania construed its ruling to be limited to the particular facts of the case and specifically

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[1] See Appendix to Petition for Writ of Certiorari, Opinion of Court of Appeals on Petition for Rehearing, 23a.

so stated in *Commonwealth ex rel. Linde v. Maroney*, 416 Pa. 331, 206 A. 2d 288 (1965), and *Commonwealth v. Patrick*, 416 Pa. 437, 206 A. 2d 295 (1965). The Supreme Court of Pennsylvania interpreted *Escobedo* to hold that "where a person in police custody is not warned of his constitutional right to remain silent during an accusatorial interrogation, it is necessary that he then be given the assistance of counsel to protect that right, *if such assistance is requested.*" (Emphasis in original.) *Commonwealth v. Negri*, 419 Pa. 117, 120, 213 A. 2d 670 (1965).

It is, of course, abundantly clear that this interpretation of the meaning of *Escobedo* has been shared by other jurisdictions, both state and federal, and that still other jurisdictions, state and federal, have reached another result. (See *Negri*, supra, at pages 120, 121.) In this state of conflict, the Court of Appeals for the Third Circuit, in the instant cases (*Russo* and *Bisignano*), by its holdings contrary to the previous holdings of the Supreme Court of Pennsylvania, has created "a serious problem for this Court" which has jeopardized "the finality of . . . judgments in relevant cases" (*Negri* at page 121).

Accordingly, the Supreme Court of Pennsylvania, following the ruling of the Court of Appeals in the instant cases, was impelled to say:

> "If the Pennsylvania courts refuse to abide by its (Court of Appeals) conclusions, then the individual to whom we deny relief need only to 'walk across the street' to gain a different result. Such an unfortunate situation would cause disrespect for the law. It would also result in adding to the already burdensome problems of the Commonwealth's trial courts, which look to us for guidance. Finality of judgments would become illusory, disposition of litigation prolonged for years, the business of the courts unnecessarily clogged, and justice intolerably delayed and frequently denied.
>
> Consequently, in order to alleviate and correct a regrettable situation, the clear indication for this Court

is to accept and follow the decisions of the Third Circuit on this matter until some further word is spoken by the Supreme Court of the United States." *Negri*, supra, at page 122.

The Commonwealth of Pennsylvania therefore respectfully urges that certiorari be granted in the instant cases, so that the growing uncertainty and confusion in this area of the law be resolved and clarified by your Honorable Court.

We note also that the question as to whether *Escobedo* is to be applied retrospectively is still unresolved. There is even uncertainty in the Court of Appeals on this subject (see concurring opinion, Forman, Circuit Judge, Appendix, 27a, et seq.). This important question should also be explicitly determined as your Honorable Court did in *Linkletter v. Walker*, 381 U. S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965), with respect to the holding in *Mapp*.

CONCLUSION.

For the foregoing reasons, the Commonwealth of Pennsylvania, by the District Attorney of Philadelphia County, urges that the petition for a writ of certiorari be granted.

Respectfully submitted,

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